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23 SEP 1963

Declass Review by NIMA/DOD

MEMORANDUM FOR THE RECORD

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SUBJECT: Question of Conflict of Interest with Respect to Proposed
Contract with [REDACTED]
25X1A [REDACTED]

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1. On 19 September 1963, I met at Sponsor's Office with [REDACTED]

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Sponsor employees; and [REDACTED]

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[REDACTED] is house
counsel.

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2. It developed that it is desired that [REDACTED] "know how" be used over the period of a year beginning about 1 October 1963 to assist in organizing the recently established Exploratory Development Laboratory (EDL). A contract would be entered into for [REDACTED] services; he would remain the employee of [REDACTED] he would have no administrative duties with the Agency and would not be involved in procurement. He would be a resident scientist who, after a period of orientation, would work out the problems given him on his own with minimal Sponsor supervision. In addition to solving problems connected with the organization and setting up of the EDL, he might also be called upon to evaluate certain scientific instruments or to give an opinion as to whether equipment had met specifications. [REDACTED] said he was concerned with and would like to have resolved by responsible authority the question of whether or not the recent conflict of interest statute, P.L. 87-849, which became effective 21 January 1963, would apply to this situation. We felt that the crux of the problem lay in whether or not [REDACTED] could be clearly considered to be a Government employee. If not, then the statute would not apply. If so, then we might have to seek another solution. We also discussed Department of Defense Directive Number 5500.10 of 1 June 1963 setting forth Rules for the Avoidance of Organizational Conflicts of Interest. It was our opinion that [REDACTED] activities would and should, such as to avoid the application of this directive which states that, "The ultimate test should always be: Is the contractor placed in a position where his judgment may be biased, or where he has an unfair competitive advantage?"

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3. In an effort to resolve this question, I discussed the matter in detail with [REDACTED] an attorney in the Office of Legal Counsel, Department of Justice, room 5138, code 187, extension 2048.

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He said the proposed situation was an unusual one which he felt might be just as well handled by the Agency hiring [REDACTED] direct for the required period but that if this could not be done conveniently, he would not maintain that [REDACTED] is, in fact, a Government employee or subject to the conflict of interest statute. As a matter of fact, he stated that even if [REDACTED] were actually a Government employee, he felt the statute would ^{NOT} apply since the thrust of the prohibitions contained in the statute is toward adversary proceedings and not toward this kind of a situation. In this connection, he referred to the legislative history to be found at 2 U. S. Congressional and Administrative News 1962, page 3852 et seq. which is Senate Report No. 2213. In addition, he furnished a copy of the committee print on Conflict of Interest dated 1 March 1963 containing Department of Justice Memorandum analyzing P. L. 87-849, compiled by the Senate Committee on the Judiciary. In further discussion of the statute, [REDACTED] stated that the one hundred and thirty days contained in the definition of a "special Government employee" refers to work days, thus twenty six weeks or six months. He further stated that once the bona fide intention had been established to set up an individual as a "special Government employee" for employment not to exceed one hundred and thirty days, the fact that circumstances might ultimately cause that period to be exceeded would not take the individual out of the category of "special Government employee" under the statute.

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[REDACTED]

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